

its jurisprudential one the ruling makes far more sense. During the five-day period between the day the case was argued and the day the decision was rendered, heated debates occurred in Congress and in the public over the validity of the theory of nullification. While the debates raged, the army prepared to impose federal law by force upon the state of South Carolina. Elsewhere, I have suggested that the *Barron* opinion reflected the Court's subtle but substantial engagement into this crisis of state. In the opinion, Marshall delivered a direct statement against the concept of nullification while reaffirming a constitutional construction previously expressed in *Cohens v. Virginia*, which considered the Supreme Court as the final authority in cases of conflicting sovereignty. Accordingly, Marshall's opinion can be considered an effort to check the forces of disunion, not by consolidating the powers of the federal government, but rather by emphasizing the inherent boundaries imposed on the federal government by the original framers of the Constitution.¹⁷

To turn a phrase, the Marshall Courts decision in *Barron* may be summarized as "a constitutional remedy for diseases most incident to constitutional government." Marshall astutely recognized the contemporary nullification movement for what it was; a new and radical states' rights argument based upon a call for constitutional reform and rethinking. During his tenure (and perhaps partly because of it), states' rights discourse had transformed from a language of "strict construction" expressed by a 'loyal opposition' to a language that spoke of the Constitution as a "dead letter" in need of

but
can
contextualize
in whole
body of
comm
law

¹⁷ My argument here is elaborated in a forthcoming article, "A Question of Great Importance: Nullification, Slavery, and *Barron v. Baltimore* (1833)." On nullification see, William W. Freehling, *Prelude to Civil War: The Nullification Controversy in South Carolina* (New York: 1965) and Merrill D. Peterson, *The Olive Branch and the Sword – The Compromise of 1833* (Baton Rouge: 1982).